



STATE OF CALIFORNIA

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E. L. SORENSEN, JR.
Executive Director

June 3, 1999

Dear Mr. :

This is in response to your letter of April 8, 1999, requesting our responses to several questions posed therein concerning the possible acquisition of the Mobile Home Park by Financial, and the change in ownership consequences to the tenants thereof. We have restated and responded to your questions in sequence below.

You state that the Mobile Home Park is a 171 lot manufactured housing park. Prior to 1996, the developer leased 154 lots upon which high quality manufactured homes, owned by lot tenants, were placed. On January 25, 1996, 64 tenants purchased their lots. On July 10, 1996, 30 lots were transferred to a third party acquirer called "FAFCO." In addition, during this period, 5 other lots were sold to other third parties. Since that date, approximately 12 additional tenants have purchased their lots, either from the park owner or from FAFCO.

Now, Financial (ICF) proposes to acquire the remaining 72 lots from the park owner and the 22 lots from FAFCO.¹ You did not say so in your letter, but in our telephone conversation which preceded your letter, you told me that ICF's purchase would be an interim transfer intended to facilitate the selling of the lots to the remaining individual tenants. With these facts in mind, we address the following questions:

I. Based on Revenue and Taxation Code sections 62.1 and 62.2 as amended in 1998, may all of the park tenants obtain the exclusion from change in ownership for a minimum of 36 months after the date ICF acquires their lots, or may they obtain this exclusion indefinitely (i.e., whenever they choose to acquire their lots), or is there a third interpretation?

Initially, we assume that your question is directed at the future purchases from ICF of only those lots which ICF would be acquiring, and not to the prior purchases of lots by former tenants from other persons or entities. It would be incumbent upon those prior purchasers to establish that they fell within an applicable exclusion in order to avoid application of a change in ownership upon the transfers of their lots to them.

To respond to your question, sections 62.1 and 62.2 create three sets of change in ownership exclusions with respect to the transfers of mobilehome parks and lots. Subdivision (a)

¹ These numbers do not follow from those in the prior paragraph. For purposes of this letter, we assume that ICF will be acquiring 72 lots from the park owner and 22 lots from FAFCO.

of section 62.1 excludes a transfer of a mobilehome park to an entity formed by the tenants of the park, and requires that the individual tenants who were renting at least 51 percent of the spaces in the mobilehome park prior to the transfer participate in the transaction through the ownership of an aggregate of at least 51 percent of the voting stock of, or other ownership or membership interests in, the entity which acquires the park. We have also expressed the view that transfers from that entity to the individual lot owners, for example to complete a condominium plan, would necessarily be excluded to fulfill the purpose of the subdivision. Letter To Assessors No. 89/13.

Subdivision (b) of section 62.1 provides a separate exclusion for the transfer of rental spaces in a mobilehome park to the individual tenants of the rental spaces, provided that (1) at least 51 percent of the rental spaces are purchased by individual tenants renting their spaces prior to purchase, and (2) the individual tenants of these spaces form, within one year after the first purchase of a rental space by an individual tenant, a resident organization as described in subdivision (k) of Section 50781 of the Health and Safety Code, to operate and maintain the park. We have expressed the view that all of the transfers of rental spaces need not occur on the same day; it is our view that the 51 percent participation can be accumulated, but must occur within the one year period within which the residents have to form the resident organization to operate and maintain the park.

A third exclusion is set forth in section 62.2, for any transfer of a mobilehome park to an entity which is *not* formed by the tenants, for a temporary period following the transfer, to facilitate the transfer of the park to resident ownership pursuant to one of the exclusions of section 62.1 described above. Within that temporary period, either subdivision (a) of section 62.1 (transfer to a tenant-formed entity), or subdivision (b) of section 62.1 (transfers to at least 51 percent of the individual tenants), must be complied with, or the exclusion of this section 62.2 is lost, and the property is subject to reappraisal and escape or supplemental assessments. §62.2, subd (d). For mobilehome parks initially transferred after 1993, this temporary period within which section 62.1 must be complied with is 36 months.

Applied to ICF's potential purchase of the mobilehome park, since ICF is neither a tenant of the park nor an entity formed and owned by the tenants of the park, if its purchase is to be excluded from change in ownership and reassessment, it must be pursuant to the terms of the third exclusion discussed above, section 62.2.² Further, since ICF is proposing to sell the individual units directly to the park tenants, the underlying exclusion upon which it would rely would appear to be subdivision (b) of section 62.1. Thus, in order for both the transfer to ICF, and the subsequent transfers to the individual tenants of the park, to be excluded from change in ownership, within 36 months after the transfer to ICF, "at least 51 percent of the mobilehome park rental spaces [must be] transferred [within a one year period] to the individual tenants of those spaces in a transaction excluded from change in ownership by subdivision (b) of Section 62.1." This, in turn, requires, within that one year period, the formation of the resident organization.

We understand that a resident organization has already been formed to operate and maintain the park; so, presumably, this part of the requirements of subdivision (b) has been complied with. What would remain, therefore, would be the purchase of at least 51 percent of the

² We assume that ICF is an "entity." In the signature block of your letter, you identify ICF as an LLC. We have expressed the opinion that, in order for the exclusion set forth in section 62.2 to apply, the transferee must be an entity, and not an individual or individuals.

spaces by individual tenants renting their spaces prior to purchase, within one year after the first such purchase.

We conclude our response to this question with two comments. First, there remains the fundamental question of whether the purchase of 72 lots from the park owner and 22 lots from FAFCO of the total of 171 constructed lots of the mobilehome park qualifies for exclusion under the provisions of section 62.2. As noted above, that section provides for the exclusion from change in ownership for “any transfer . . . of a mobilehome park . . .” We have previously expressed the view that the transfer of only some of the lots of a mobilehome park is not a transfer of the mobilehome park, and thus, does not qualify for the exclusion provided by this section. However, that was in the context of the developer of the park retaining some of the lots for rental or later sale. Here, we understand that ICF is purchasing substantially all of the remaining park lots which have not been previously purchased by individual tenants. Although the matter is not free from doubt, given the clear public policy of sections 62.1 and 62.2 favoring the transfer of mobilehome parks to resident ownership (see, e.g., subdivision (e) of section 62.1), we conclude that the transfer of substantially all remaining lots of a mobilehome park which have not previously been purchased by individual tenants to an entity, with the intent to facilitate the purchase of the spaces therein by the individual tenants of those spaces, would qualify for exclusion under section 62.2, if all of the other requirements of that section are satisfied.

Second, we note that the tenants who have previously purchased their lots are no longer “tenants renting their spaces”, nor are the lots they purchased “rental spaces” for purposes of subdivision (b) of section 62.1. For purposes of satisfying the “51 percent” requirement, such residents would not be included in the calculation. Thus, in order for ICF to be successful in meeting the requirement of that subdivision that “at least 51 percent of the rental spaces are purchased by individual tenants renting their spaces prior to purchase”, it must demonstrate that, within the applicable one year period, at least 51 percent of the total of 94 rental spaces acquired, occupied or unoccupied, or 48 lots, have been purchased by individual tenants renting those spaces prior to the purchase.

II. Based on sections 62.1 and 62.2 as amended in 1998, may all remaining FAFCO tenants obtain the exclusion until July 10, 1999? Is there any provision to extend this period?

No, the remaining FAFCO tenants, as tenants of or purchasers from FAFCO, may not obtain an exclusion under either section 62.1 or 62.2 inasmuch as they do not fit within the requirements of any of the three exclusions described above. There is no entity formed by the residents, and thus, the criteria of subdivision (a) of section 62.1 is not met. Your reference to a date 36 months after the date FAFCO acquired the lots appears to be a reference to section 62.2. However, as discussed above, it is our view that the purchase of only some of the lots in a mobilehome park is not the transfer of a mobilehome *park*, as described in section 62.2. Moreover, FAFCO acquired far less than 51 percent of the lots; thus, it would be impossible for it to make transfers that would comply with either subdivision (a) or subdivision (b) of section 62.1. Thus, there is no exclusion available, and nothing to extend.

III. Does the elimination of the language “and before January 1, 2000” following “on or after January 1, 1985” in the 1998 amendments to section 62.1, subdivision (b) mean that tenants have an unlimited amount of time to acquire their lots and obtain the exemption?

In a limited sense, yes. The January 1, 2000 date was an end or "sunset" date for the entirety of the exclusion set forth in subdivision (b). Its repeal means that the exemption continues in existence and remains available after that date. Thus, an acquisition program could commence in the year 2000 or thereafter and qualify for the exemption.

However, that date, and the earlier dates in prior versions of the subdivision, also effectively served as a cut-off date for purchases of rental spaces by individual tenants of the mobilehome park who, when the park spaces originally began to be sold to the tenants, did not purchase, but who later decided to do so. The repeal of the sunset date also had the effect of eliminating the cut-off date. Thus, in the limited situation where the park qualified for the exclusion because at least 51 percent of the tenants purchased their units within one year of the first such purchase, and met the other requirements of subdivision (b), nonparticipating tenants would have an unlimited amount of time to acquire their spaces and obtain the exemption under current law.

Otherwise, the time limitations in sections 62.1 and 62.2, as described above, are still in place, although I am sure you noted that a one-year grace period was added to subdivision (a) of section 62.1 in the same legislation that repealed the sunset date for subdivision (b).

The views expressed in this letter are advisory only; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

/s/ Daniel G. Nauman

Daniel G. Nauman
Tax Counsel

DGN:jd

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cc:

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